

Special Education Compliance Investigations: Helping Local Education Agencies and Complainants to Gather Evidence Regarding Specific Allegations of State and Federal Law and Regulations

INVESTIGATION TRAINING

“Gathering Evidence”

Standard Complaint Investigations Examples for Local Education Agencies and Complainants

This document contains some examples of the most common special education allegations that are investigated by the California Department of Education. The information is intended help parents, other complainants and staff representing local education agencies (LEA) to gather information regarding specific allegations. The information and materials gathered by the parties will assist the state investigator to develop a compliance report that is accurate, complete and reflective of participation by all parties to the complaint.

When a complaint investigation is initiated, it is recommended that the LEA and the complainant prepare materials and information to provide to the assigned investigator. The “complainant” is typically a parent, advocate, attorney or other interested party. Each complaint has an assigned investigator. The name and telephone number of the investigator is always included in the complaint notice materials sent to the complainant and to the district upon the initiation of a complaint. The investigator will contact each of the parties to the complaint.

The information developed through the investigation process will result in a written compliance report. The report must be completed within 60 days from when the complaint was received by the Department of Education and each party to the complaint will receive a copy of the report. The report will include each allegation, each requirement, each party’s position, evidence, findings of fact, and a conclusion. In cases where there is a determination of noncompliance, the report will include required corrective actions and a timeline to complete the required actions. Information regarding a reconsideration of the report is also provided.

The allegations used as examples in this document include:

- Failure to implement the Individualized Education Program (IEP), including sections on accommodations and specific related services
- Failure to adhere to the 30-day interim placement requirements
- Failure to provide pupil records within 5 days
- Failure to maintain procedural safeguards and timelines, including those related to assessment, IEP and other programmatic timelines
- Failure to include all required members in the IEP team

"Failure to Implement the IEP"

(The most common complaint statewide)

Citation/Requirement

34 Code of Federal Regulations (34 CFR) section (§) 300.342(b): Each public agency shall ensure that . . . [a]n IEP . . .]s implemented as soon as possible following the [IEP team] meetings . . .

FACTUAL ELEMENTS AND EVIDENCE LIST

- Allegation: Failure to implement the IEP
- Issue: Was the IEP implemented? (This is the question to be answered by the investigation.)
- Questions typically asked by the investigator:
 - ? Was there an IEP in effect during the relevant time period?
 - ? What does the IEP say with regard to the specific allegation in the complaint?
 - ? If the language of the IEP is unclear, what did the parties intend the specific requirements of the IEP to be with regard to the issue in the complaint?
 - ? Did the District implement the requirements of the IEP?
 - ? If the District failed to fully implement the IEP, what were the specific causes of that failure?
 - ? What were the educational effects on the student of the failure to implement the IEP?
 - ? Were those educational effects so substantial as to constitute a denial of Free Appropriate Public Education (FAPE)?
 - ? Was any service or responsibility under the IEP delegated to another public or nonpublic school or agency?
 - ? What role did the district play in assuring that such services by other agencies were actually provided?

EVIDENCE (The investigator will typically request this type of documentation from the appropriate party[s].)

- Examples are listed below:
 - ? The current IEP
 - ? Service provider logs
 - ? Personnel records (attendance)
 - ? Testimony of service provider, student, parent, other, etc.
- The investigator will determine, through the investigation activity, programs and procedures would normally operate relative to the complaint and identify gaps or deviations from the norm

"Failure to Implement the IEP (Accommodations)"

FACTUAL ELEMENTS AND EVIDENCE LIST

- Allegation: Failure to implement the IEP (accommodations)
- Issue: Were the accommodations specified in the IEP implemented?

- Questions typically asked by the investigator:
 - ? Is the IEP signed by the parent and the District?
 - ? Are the accommodations listed in the IEP or supplemental documents?
 - ? What specifically is required to provide the accommodation(s)?
 - ? Who is responsible for implementing accommodations; what are implementation requirements; where are accommodations to be implemented?

EVIDENCE (The investigator will request this type of documentation from the appropriate party[s].)

- A copy of the IEP
- A list of accommodations and who is responsible for the provision of each accommodation
- Service provider logs (teacher, other)
- Testimony from the providers, student and parent, others as appropriate
- Statements regarding observations and the date(s) of such observations

“Failure to Implement the IEP (Specific Related Services)”

FACTUAL ELEMENTS AND EVIDENCE LIST

- Allegation: Examples of related services include, but are not limited to, speech and language services, occupational and/or physical therapy, counseling, mental health related services, transportation, and any other service that is determined to be necessary for the student to benefit from his educational program as determined by the IEP team.
- Issue: Were the related services specified in the IEP implemented?
- Questions typically asked by the investigator:
 - ? What related services are required by the IEP (frequency, location, duration, date of implementation)?
 - ? Is there a valid IEP (and addenda); is the IEP signed by both the District and the parent; does the parent agree to the IEP?
 - ? Does the District have a procedure for monitoring implementation of related service provisions in IEPs?
 - ? Are the services contracted out to an independent party, nonpublic school or agency?
 - ? If provided at the school site, does the classroom teacher remember the student being dismissed from class to receive related services?

EVIDENCE (The investigator will typically ask additional in-depth questions and request the following documentation from the appropriate party[s].)

- Copy of IEP and addenda
- Evidence that the related service is being provided (i.e., copies of service logs; calendars with dates of attendance/participation; service provider notes)
- Statement of Complainant
- Statement of the service provider
- Corroborating statement from third party

- If services are contracted for, further evidence that the service is being provided (i.e., as noted above plus copies of contractual agreements; billing records; service logs)
- For services provided at the school site, a statement from the daily teacher regarding the provision of related services, including dates and/or as much specific time-frame information as possible
- Student interview if appropriate
- Observations
- Copies of the LEA's standard and monitoring procedures to ensure required services are provided, including case management activity and responsibilities.

"Failure to Adhere to 30-Day Interim Placement Requirements"

Citation/Requirement

Education Code (EC) section (§) 56325(a-c): Whenever a pupil transfers into a school district from a school district not operating programs under the same local plan in which he or she was last enrolled . . . the administrator of a local program...shall ensure that the pupil is immediately provided an interim placement for a period not to exceed 30 days. The interim placement must be in conformity with an individualized education program, unless the parent or guardian agrees otherwise. The individualized education program implemented during the interim placement may be either the pupil's existing individualized education program, implemented to the extent possible within existing resources...or a new individualized education program . . . Before the expiration of the 30-day period, the interim placement shall be reviewed by the [IEP] team and a final recommendation shall be made by the team . . . The team may utilize information, records, and reports from the school District or county program from which the pupil transferred . . .

FACTUAL ELEMENTS AND EVIDENCE LIST

- Allegation: Failure to adhere to 30-day interim placement requirements
- Issue: Has the District implemented the IEP from the previous school?
- Questions typically asked by the investigator:
 - ? Is there a current IEP?
 - ? Does the District know about the IEP from the previous District?
 - ? Did the District implement an interim placement during the first thirty days?
 - ? Was the interim placement consistent with the IEP "within the District's existing resources?"
 - ? Did the District convene an IEP team meeting within thirty days?
 - ? Does the District have policies and in place for handling interim placements?

EVIDENCE (The investigator will request this type of documentation from the appropriate party[s])

- A copy of the student's IEP
- A determination of IEP requirements from the previous district
- Date exit from the previous district
- Date of enrollment in the current district

- Evidence regarding whether the parent brought the current IEP to the attention of the school or to the attention of the District at the time of enrollment (i.e., statements from the parent, from school staff; inclusion of notes, statements, forms within the student's file or stated on an enrollment form)
- Identification of the program previously provided for the student? (i.e., previous IEP and other information as needed; class assignments; the class schedule for secondary students; class rosters; service provider logs; input from the student)
- Determination of what information the parent given about an interim program (i.e., copies of administrative placement forms; statements from each of the parties; correspondence)
- Date of the interim placement and a copy of the document placing the student
- Evidence to determine the services provided during the interim placement and by whom (i.e., statements from service providers, parent, student; case logs; billing statements)
- Determination of the District's current resources to implement the existing IEP
- Copies of District procedures, directives and evidenced of trainings provided to staff regarding interim placement requirements, including a copy of the District's interim placement procedure/form for all students
- The District's general enrollment form utilized for all pupils that asks if the student has a current IEP or if special education services were received at the previous school (i.e., form and its general usage)
- Evidence regarding the new District contacting the prior district regarding an IEP (i.e., form letter; fax; phone logs; other correspondence)
- Evidence that an IEP team meeting was properly convened within thirty days (i.e., copies of the notice form; the new IEP document)

"Failure to Provide Pupil Records Within Five Calendar Days"

Citation/Requirement

Education Code (EC) section (§) 56504: The parent shall have the right and opportunity to examine all school records of the child and to receive copies...within five days after such request is made by the parent, either orally or in writing . . .

FACTUAL ELEMENTS AND EVIDENCE LIST

- Allegation: Failure to provide pupil records within five calendar days
- Issue: Were copies of requested records provided to the parent within five calendar days of receipt of a written request?
- Questions typically asked by the investigator:
 - ? Was there a written or oral request for copies of pupil records?
 - ? What is the District procedure to respond to a written request? To a request made verbally?
 - ? When did the District receive the request?
 - ? What was the specific content of the request?
 - ? Did the parents receive all the requested records? If so, when?
 - ? Was the District required to maintain such records, and does the District have them?
 - ? Are there District policies/procedures for providing records within five days?

EVIDENCE (The investigator will request this type of documentation from the appropriate party[s])

- Documentation of the standard operating procedures for the District to ensure compliance. (i.e., copies of procedures in place to respond to a request for copies of records and/or access to a student's file; directives to staff; documentation of a tracking system in place to ensure the timeline requirements are met and names of responsible staff; evidence of training provided to staff)
- A copy of the request (i.e., copy of the written request or statement of parent/school personnel)
- Verification of the date of receipt of the request by the District (i.e., date-stamps; telephone/correspondence logs; fax confirmation; testimony)
- Verification of what records were requested and whether all maintained records were received. (i.e., site log; notation of parent and District personnel; return receipt; school log for pick-up; postmark; testimony)

“Failure to Adhere to Procedural Safeguards – Timelines”

FACTUAL ELEMENTS AND EVIDENCE LIST

- Allegation: Failure to adhere to procedural safeguards – timelines
- Issue: Were timeline requirements met?
- Questions typically asked by the investigator will stem from the specific timeline issue within the complaint. The most common timeline allegations relate to the provision of records and referral for special education/assessment, development of an IEP within required timelines, the provision of notices, and the timelines related to placement, suspension, expulsion, alternative placement.

EVIDENCE (The investigator will request this type of documentation from the appropriate party[s])

Note: There will be different investigation components based on the specific timeline addressed in the complaint. The following are not inclusive, but are examples of common issues, including typical questions asked by the investigator and typical examples of evidence:

- Assessment Timelines
 - ? Evidence to determine appropriate dates (i.e., date of request for referral for special education and/or special education assessment; date of provision of a proposed assessment plan to the parent; date of receipt of a signed assessment plan by the district; dates of the assessment; date of the IEP team meeting and of the annual review)
 - ? A determination of what assessment was requested
 - ? Specific evidence related to a parent request for assessment: (i.e., copy of a written request; information/correspondence; telephone records/notes regarding a request made verbally; copies of the district procedures to respond to a request for an assessment that is made verbally; verification with staff [interview, evidence of training]; documentation regarding requests for assessment that result originate from the Student Study Team [SST] including dates and notes regarding the specific referral)

- ? What assessment took place and when? (i.e., review of test protocols; statements from the assessor(s), parent, student)
- ? Was the assessment multidisciplinary? Did the assessment include all that is required by the assessment plan within the required time line? (i.e., copies of assessment plan and test protocols; billing to independent assessors if appropriate; other documentation of assessor participation including participation of the parent as appropriate)
- Notices
 - ? Were there appropriate meeting notices? (i.e., copies and dates notices were sent or given to the parent)
 - ? When was the IEP team meeting held? (i.e., copy of the IEP and statements from the participants)
- Annual Review, Triennial Review
 - ? When was last annual review? Did formal assessment take place? Did assessment take place as a result of requirements of the IEP to measure progress? What are the dates of assessment and what are the dates of the IEP team meetings? (i.e., pupil records documenting the response to these questions; copies of test protocols and IEPs; statements from the assessors, service providers, parents, other as appropriate)
 - ? Triennial – when was last initial or triennial IEP team meeting? What are the dates of assessment? When was a proposed assessment plan provided to the parent? When was a signed assessment plan received by the District? What are the dates of the IEP team meetings? (i.e., typically the same as noted in the annual review paragraph above)
- Parent request for an IEP team meeting
 - ? Parent/teacher request for meeting (30 days): When was the request made, and when was the request received by the District? When was the IEP team meeting held (i.e., copy of the parent request; statements regarding a request made verbally; the response of district staff; copies of procedures in place to respond to verbal and/or written requests for a meeting of the IEP team; demonstrated knowledge of District staff of the requirements; copy of the IEP)?
- Timelines - Positive Behavioral Intervention, Functional Analysis Assessment

Note: The complainants will typically be asked to provide a general chronology (dates) of activity for the following items to the best of their knowledge; the local education staff will typically be asked to provide a chronology of activity for the following items with supporting documentation.

 - ? Timelines for suspension and/or expulsion, manifest determination, and functional behavioral assessment (i.e., chronology of activity (with dates) related to the student and district activity in regard to the student's behavior; dates of suspension and/or expulsion; IEP team meetings; district staff meetings; assessment, development of informal and formal behavior plans and whether a plan was based upon a functional analysis assessment if appropriate)
 - ? Placement in alternative educational setting (i.e., description of the activity that initiated the placement in an alternative educational setting; dates of placement and a description of the setting; services provided in the alternative setting with supporting documentation)
 - ? Interim – thirty days (See previous section. . . i.e., date exit from the previous district; date of enrollment in the current district; date of interim placement;

statement of services provided during the interim placement and by whom; date of IEP team meeting—evidence as noted previously in this document)

- ? Designated instruction and services (DIS) & Assembly Bill (AB) 2726 referral (i.e., dates of referral, including any expanded IEP team meetings; date of response from the County Department of Mental Health; dates of any subsequent assessment plans and assessments and IEP team meetings; date of placement; for other DIS services—see previous section regarding failure to implement the IEP-related services)
- ? Transition plan at age fourteen (i.e., student's date of birth; dates of IEP team meetings; copy of the IEP with required transition services language; copies of district policies, directives and staff development to implement the requirement)
- ? Transition plan from infant, preschool, elementary, middle, secondary, out of special education (i.e., information as noted above—from infant to preschool; a description of the transition activity from DDS)
- ? Transfer of rights at age of majority (i.e., copies of notices and copies of IEPs; demonstrated knowledge of staff regarding notice requirements and IEP participation; directives and evidence of training to staff)

“Failure to Include all Required Members in the Individualized Education Program Team”

Citation/Requirement

34 Code of Federal Regulations (34 CFR) section (§) 300.344: . . . The public agency shall ensure that the IEP team for each child with a disability includes . . .

FACTUAL ELEMENTS AND EVIDENCE LIST

- Allegation: Failure to include all required members in the individualized education program team
- Issue: Was the IEP team convened with all required members?
- Questions typically asked by the investigator:
 - ? Is there a valid IEP?
 - ? Did the IEP team meeting take place? When?
 - ? Who attended?
 - ? What was the purpose of the IEP team meeting?
 - ? Given the purpose, who were the required/appropriate (EC 56341[c]) IEP team members?

EVIDENCE (The investigator will request this type of documentation from the appropriate party[s])

- A copy of the notice sent to all parties regarding the IEP team meeting
- A copy of the signed IEP
- Statements/testimony from the participants at the IEP team meeting
- A copy of the procedures in place to maintain required members of the IEP team, including a description of the procedures in place to ensure representation when a required member cannot attend